

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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YOTAM MAROM and MIRIAM ROCEK,

Plaintiffs,

-against-

NYPD SERGEANT FIOR BLANCO, NYPD LEGAL
BUREAU LIEUTENANT DANIEL ALBANO, NYPD
LEGAL BUREAU DETECTIVE KENNETH
O'DONNELL, NYPD OFFICER MICHAEL
GALGANO, SHIELD NO. 2671, NYPD OFFICER
CYNTHIA BOYLE, SHIELD 06663,

**DECLARATION OF
GIDEON ORION
OLIVER IN
OPPOSITION TO
DEFENDANTS'
MOTION FOR
SUMMARY JUDGMENT**

15-CV-2017 (PKC)(SN)

Defendants.

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DECLARATION OF GIDEON ORION OLIVER

Gideon Orion Oliver, an attorney duly admitted to practice before this Court, hereby declares pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the attorney for Plaintiffs YOTAM MAROM and MIRIAM ROCEK.
2. I make this Declaration in Opposition to Defendants' Motion for Summary Judgment. The styles of referring to documents annexed hereto are adopted throughout Plaintiffs' papers opposing Defendants' summary judgment motion.

PLAINTIFFS' DEPOSITION TRANSCRIPTS

3. Attached as Exhibit 1 are true excerpts of the deposition transcript of Plaintiff Yotam Marom (the "Marom Dep.")
4. Attached as Exhibit 2 are true excerpts of the deposition transcript of Plaintiff Miriam Rocek (the "Rocek Dep.")

PHOTOGRAPH AND VIDEO STILLS

5. Attached as Exhibit 3 is a photo of plaintiff Rocek's torn coat, which was discussed at Defendant Cynthia Boyle's deposition. ("Rocek Photo.")
6. Attached collectively as Exhibit 4 are stills from the videos referred to by Plaintiffs as¹ "NYPD Violence"; "NYPD Re-Eviction"; and "NYPD's Iron Fist," as follows:

- a. NYPD Violence Still, 3:18;
- b. NYPD Violence Still, 3:20;
- c. NYPD Re-Eviction Still, 0:18;
- d. NYPD Violence Still, 3:22;
- e. NYPD Violence Still, 3:24;
- f. NYPD Re-Eviction Still, 0:34;
- g. NYPD's Iron Fist Still, 1:32;
- h. NYPD's Iron Fist Still, 2:55;
- i. NYPD's Iron Fist Still, 3:09.

DEFENDANTS' AND THIRD-PARTY DEPOSITION TRANSCRIPTS

7. Attached as Exhibit 5 are true excerpts of the deposition transcript of Defendant NYPD Officer Michael Galgano taken on October 8, 2014 in *Caravalho et. al. v. City of New York et. al. 13-cv-4174 (PKC)* (the "2014 Galgano Dep.")

8. Attached as Exhibit 6 are true excerpts of the deposition transcript of Defendant Galgano taken on December 7, 2016 (the "Galgano Dep.")

¹ Ex. S to Defendants' Declaration in support of their summary judgment motion, Dkt. 140, the "YouTube Video disc", contains video of a number of incidents from March 17, 2012. For purposes of the current motion, Plaintiffs refer to the videos as:

- "Inside the NYPD Re-Eviction of Liberty Square M17.mp4" ("NYPD Re-Eviction");
- "NYPD's Iron Fist_ OWS Re -Occupation Arrests Protester Has Seizure in Handcuffs.mp4" ("NYPD's Iron Fist") (referred to by Defendants as YouTube Video #5);
- "(2_2) NYPD violence v. OWS - March 17, 2012 (OWS 6 Month Anniversary).mp4" ("NYPD Violence") (referred to by Defendants as YouTube Video #3); and
- "#ows arrests inside Zuccotti park during reoccupation 31712 #m17.mp4" ("OWS Arrests").

9. Attached as Exhibit 7 are true excerpts of the transcript of Defendant NYPD Sergeant Fior Blanco's deposition taken on May 14, 2015 as a third-party witness in *Caravalho* (The "2015 Blanco Dep.")

10. Attached as Exhibit 8 are true excerpts of the transcript of Defendant Blanco's deposition on January 13, 2017 (the "Blanco Dep.")

11. Attached as Exhibit 9 are true excerpts of the deposition transcript of Defendant NYPD Officer Cynthia Boyle (the "Boyle Dep.")

12. Attached as Exhibit 10 are true excerpts of the deposition transcript of Defendant NYPD Legal Bureau Attorney Lieutenant Daniel J. Albano (the "Albano Dep.")

13. Attached as Exhibit 11 are true excerpts of the deposition transcript of Defendant NYPD Legal Bureau Attorney Kenneth O'Donnell (the "O'Donnell Dep.")

14. Attached as Exhibit 12 are true excerpts of the deposition transcript of third-party NYPD Officer Steven Valentine (the "Valentine Dep.")

15. Attached as Exhibit 13 are true excerpts of the deposition transcript of third-party former NYPD Chief of Department Joseph Esposito taken on January 12, 2015 in *Caravalho* (the "Esposito Dep.")

16. Attached as Exhibit 14 are true excerpts of the deposition transcript of third-party NYPD Deputy Inspector Edward Winski taken in *Caravalho* (the "Winski Dep.")

17. Attached as Exhibit 15 are true excerpts of the deposition transcript of third-party NYPD Lieutenant Frank Viviano in *Caravalho* (the "Viviano Dep.")

18. Attached as Exhibit 16 are true excerpts of the deposition transcript of third-party NYPD Officer Jabded Ahmed in *Caravalho* (the "Ahmed Dep.").

19. Attached as Exhibit 17 are true excerpts of the deposition transcript of third-party NYPD Officer Cheung Li in *Caravalho* (the "Li Dep.")

20. Attached as Exhibit 18 are true excerpts of the deposition transcript of third-party NYPD Officer Alexis Rodriguez in *Caravalho* (the “Rodriguez Dep.”)

ARREST PROCESSING DOCUMENTS

21. Each OLBS Report also contains a field indicating whether the officer who created the OLBS Report used force during the arrest and if so characterizing that force as well as fields identifying fellow officers and/or supervisors who assisted in creating or entering the OLBS Report into the OLBS computer system. See, e.g., *Marom v. Esposito*, 15-cv-2017 (PKC), 2017 US Dist. LEXIS 60969, at *4 (SDNY April 21, 2017).

22. Attached as Exhibit 19 is a demonstrative summary compiling relevant information from all the OLBS Reports, DA Datasheets, NYC Criminal Court Complaints, and DP Forms (the “Arrest Processing Summary”). *See* Fed. R. Evid. §§611 and 1006.

23. Attached as Exhibit 20 is a true copy of the relevant Mass Arrest Report with redactions² (the “Mass Arrest Report”).

24. Attached as Exhibit 21 is a true copy of an exhibit marked as Valentine Exhibit 1 at the Valentine Deposition (the “Legal Bureau OLBS Narrative”).

25. Attached as Exhibit 22 is a true copy of the NYPD Patrol Guide Procedure No. 213-06 - “Large-Scale Arrest Processing Procedure” (“P.G. 213-06”).

26. Attached as Exhibit 23 is a true copy of a provision of the NYPD Patrol Guide Procedure No. PG 208-20 – “Turnover Arrests” (“P.G. 208-20”).

DEFENDANT NYPD OFFICER CYNTHIA BOYLE

27. Attached as Exhibit 24 is a true copy of the OLBS Report regarding Plaintiff Rocek’s arrest created by Defendant Boyle (the “Rocek OLBS Report”).³

² Redactions for non-Plaintiff arrestees were made before the document was produced to Plaintiffs as follows: Prisoner Last Name; Prisoner First Name; M/F; Race; Age; Street Address; City; and State.

28. Attached as Exhibit 25 is a true copy of the DA Datasheet regarding Plaintiff Rocek (the “Rocek DA Datasheet”).

29. Attached as Exhibit 26 is a true copy of the NYC Criminal Court Complaint initiating Plaintiff Rocek’s criminal prosecution (the “Rocek Complaint”).

30. Attached as Exhibit 27 is a true copy of the official Court Action Sheet regarding Plaintiff Rocek’s criminal prosecution (the “Rocek Court Action Sheet”).

31. Attached as Exhibit 28 is a true copy of the Certificate of Disposition regarding Plaintiff Rocek’s criminal prosecution (the “Rocek Certificate of Disposition”).

32. Attached collectively as Exhibit 29 are true copies of the remaining OLBS Reports created by Defendant Boyle (which, along with Exhibit 24, are referred to collectively as the “Boyle OLBS Reports”) as follows: Arrest numbers M12624775; M12624781; M12624787; and M12624794.

33. Attached as Exhibit 30 is a true copy of the DA Datasheet regarding arrest number M12624775 processed by Defendant Boyle (the “Boyle DA Datasheet”)

34. Attached collectively as Exhibit 31 are true copies of the two NYC Criminal Court Complaints sworn to by Defendant Boyle (the “Boyle Complaints”), as follows: One covering the arrests of Plaintiff Rocek and three others; M12624781; M12624787; M12624791 (Rocek); M12624794; and one covering the arrest of one person; M12624775.

DEFENDANT NYPD OFFICER MICHAEL GALGANO

35. Attached as Exhibit 32 is a true copy of the OLBS Report regarding Plaintiff Marom’s arrest, created by Defendant Galgano (the “Marom OLBS Report”).

³ Plaintiffs have redacted the following personal information from all OLBS Reports: Defendant’s Date of Birth; Defendant’s Social Security Number; Defendant’s Permanent Address; arresting officer’s Tax Number; approving supervisor’s Tax Number; and The tax Number of the NYPD Officer responsible for entering the report.

36. Attached as Exhibit 33 is a true copy of the DA Datasheet regarding Plaintiff Marom's arrest (the "Marom DA Datasheet").

37. Attached as Exhibit 34 is a true copy of the NYC Criminal Court Complaint initiating Plaintiff Marom's criminal prosecution (the "Marom Complaint").

38. Attached as Exhibit 35 is a true copy of the official Court Action Sheet regarding Plaintiff Marom's criminal prosecution (the "Marom Court Action Sheet").

39. Attached as Exhibit 36 is a true copy of the Certificate of Disposition regarding Plaintiff Marom's criminal prosecution (the "Marom Certificate of Disposition").

40. Attached as Exhibit 37 is a true copy of the OLBS Report regarding *Caravalho* Plaintiff Joseph Sharkey's arrest, created by Defendant Galgano (the "Sharkey OLBS Report").

41. Attached as Exhibit 38 is a true copy of the Decline to Prosecute form created by the office of the District Attorney of New York County ("DANY") regarding Sharkey's arrest (the "Sharkey DP Form").

42. Attached collectively as Exhibit 39 are true copies of the remaining three OLBS Reports created by Defendant Galgano (which, along with Exhibits 32 and 37, are referred to collectively as the "Galgano OLBS Reports"), as follows: Arrest numbers M12624780; M12624790; and M12624808.

43. Attached collectively as Exhibit 40 are true copies of Defendant Galgano's remaining DP forms created by the office of the DANY (which, along with Exhibit 38, are referred to collectively as the "Galgano DP Forms") as follows: Arrest numbers M12624780; and M12624808.

44. Attached as Exhibit 41 is a true copy of a page from Defendant Galgano's Memo Book entry from March 17-18, 2012 (the "Galgano Marom Memo Book Page").

45. Attached as Exhibit 42 is a true copy of a page from Defendant Galgano's Memo Book entry from March 17-18, 2012 (the "Galgano Sharkey Memo Book Page").

OTHER THIRD-PARTY ARREST PROCESSING DOCUMENTS

THIRD-PARTY NYPD OFFICER JABDED AHMED

46. Attached collectively as Exhibit 43 are true copies of OLBS Reports created by Officer Ahmed (the "Ahmed OLBS Reports"), as follows: Arrest numbers M12624856; M12624857; M12624858; M12624860; and M12624862.

47. Attached collectively as Exhibit 44 are true copies of DP Forms regarding Officer Ahmed's assigned arrests (the "Ahmed DP Forms"), as follows: Arrest numbers M12624856; M12624857; M12624858; M12624860; and M12624862.

THIRD-PARTY NYPD OFFICER OFFICER ALEXIS RODRIGUEZ

48. Attached collectively as Exhibit 45 are true copies of OLBS Reports created by Officer A. Rodriguez (the "A. Rodriguez OLBS Reports"), as follows: Arrest numbers M12624821; M12624835; M12624838; M12624846; and M12624853.

49. Attached collectively as Exhibit 46 are true copies of DP Forms regarding Officer A. Rodriguez's assigned arrests (the "A. Rodriguez DP Forms"), as follows: Arrest numbers M12624821; M12624835; M12624838; M12624846; and M12624853.

THIRD-PARTY NYPD OFFICER OFFICER MICHAEL HO

50. Attached collectively as Exhibit 47 are true copies of OLBS Reports created by Officer Michael Ho (the "Ho OLBS Reports"), as follows: Arrest numbers M12624766; M12624774; M12624776; M12624785; and M12624792.

51. Attached collectively as Exhibit 48 are true copies of the two NYC Criminal Court Complaints sworn to by Officer Ho (the "Ho Complaints"), as follows: One covering

the arrests of four people; M12624774; M12624776; M12624785; M12624792; and One covering the arrest of one person; M12624766.

THIRD-PARTY NYPD OFFICER OFFICER CHEUNG LI

52. Attached collectively as Exhibit 49 are true copies of OLBS Reports created by Officer Li (the “Li OLBS Reports”), as follows: Arrest numbers M12624825; M12624839; M12624843; M12624847; and M12624851.

53. Attached collectively as Exhibit 50 are true copies of DP Forms regarding Officer Li’s assigned arrests (the “Li DP Forms”), as follows: Arrest numbers M12624825; M12624839; M12624843; M12624847; and M12624851.

THIRD-PARTY NYPD OFFICER OFFICER LIZA RODRIGUEZ

54. Attached collectively as Exhibit 51 are true copies of OLBS Reports created by Officer Liza Rodriguez (the “L. Rodriguez OLBS Reports”), as follows: Arrest numbers M12624699; M12624803; M12624810; M12624811; and M12624816.

55. Attached collectively as Exhibit 52 are true copies of two NYC Criminal Court Complaints sworn to by Officer L. Rodriguez (the “L. Rodriguez Complaints”), as follows: One covering the arrests of four people; M12624803; M12624810; M12624811; M12624816; and One covering the arrest of one person; M12624799.

THIRD-PARTY NYPD OFFICER STEPHEN VALENTINE

56. Attached collectively as Exhibit 53 are true copies of OLBS reports created by officer Valentine (the “Valentine OLBS Reports”), as follows: Arrest numbers M12624801; M12624807; M12624813; M12624820; and M12624832.

57. Attached collectively as Exhibit 54 are true copies of the DA Datasheets related to all 5 of the arrests that Officer Valentine processed (the “Valentine DA Datasheets”).

58. Attached collectively as Exhibit 55 are true copies of four NYC Criminal Court Complaints sworn to by Officer Valentine (the “Valentine Complaints”), as follows: Five covering the arrests of one person each; Arrest numbers M12624801; M12624807; M12624813; M12624820; and M12624832.

THIRD-PARTY NYPD OFFICER JAMES LINDAO

59. Attached collectively as Exhibit 56 are true copies of OLBS reports created by officer James Lindao (the “Lindao OLBS Reports”), as follows: Arrest numbers M12624824; M12624828; M12624831; M12624833; and M12624836.

60. Attached collectively as Exhibit 57 are true copies of DP forms regarding Officer Lindao’s assigned arrests (the “Lindao DP Forms”), as follows: Arrest numbers M12624824; M12624831; and M12624833.

61. Attached collectively as Exhibit 58 are true copies of the two NYC Criminal Court Complaints sworn to by Officer Lindao (the “Lindao Complaints”), as follows: One covering the arrest of one person; M12624828; and One covering the arrest of one person; M12624836.

THIRD-PARTY NYPD OFFICER ROY SULLO

62. Attached collectively as Exhibit 59 are true copies of OLBS Reports created by Officer Roy Sullo (the “Sullo OLBS Reports”), as follows: Arrest numbers M12624783; M12624827; M12624834; M12624837; and M12624840.

63. Attached collectively as Exhibit 60 are true copies of DP forms regarding Officer Sullo’s assigned arrests (the “Sullo DP Forms”), as follows: Arrest number M12624783; and Arrest number M12624827.

64. Attached as Exhibit 61 is a true copy of an NYC Criminal Court Complaint covering arrest numbers M12624840; M12624837; and M12624834 sworn to by Officer Sullo (the “Sullo Complaint”).

THIRD-PARTY NYPD OFFICER LISA WARING

65. Attached collectively as Exhibit 62 are true copies of OLBS reports created by Officer Lisa Waring (the “Waring OLBS Reports”), as follows: Arrest numbers M12624866; and M12624873.

66. Attached as Exhibit 63 is a true copy of an NYC Criminal Court Complaint covering arrest number M12624866 sworn to by Officer Waring (the “Waring Complaint”).

MISCELLANEOUS

67. Attached as Exhibit 64 are true excerpts of the transcript of the January 19, 2017 hearing in this matter (the “1-19-17 Hearing Tr.”).

68. Exhibits 24, 29, 32, 37, 39, 43, 45, 47, 49, 51, 53, 56, 59, and 62 are collectively referred to herein as the “OLBS Reports.”

69. Exhibits 38, 40, 44, 46, 50, 57, and 60 are collectively referred to herein as the “DP Forms.”

70. Exhibits 26, 31, 34, 38, 52, 55, 58, 61, and 63 are collectively referred to herein as the “Criminal Court Complaints.”

71. Setting aside minor typographical, non-substantive differences⁴, the DETAILS sections of the 20 total OLBS Reports prepared by Galgano, Valentine, Ho, and A. Rodriguez state:

⁴ As representative examples, compare M12624773 (“ZUCOTTI”; “LT. VIVIANO OF MSTF”) with M12624774 (“ZUCCOTTI”; “LT. VIVIANO OF MSTF”) and with M12624846 (“LT. VIVIANO OFMSTF”).

AT T/P/O BROOKFIELD PROPERTY DIRECTOR MIKE LARKIN AND LT. VIVIANO OF MSTF INFORMED THE CROWD THAT THEY HAD TO LEAVE ZUCCOTTI PARK SO IT COULD BE CLEANED OF DEBRIS. ARRESTEE REFUSED TO LEAVE. ARRESTEE WAS INFORMED BY A/O THEY WERE UNDER ARREST. ARRESTEE RESISTED BY LYING ON THE GROUND, INTERLOCKING ARMS WITH OTHERS AND REFUSING TO PLACE HANDS BEHIND THEIR BACKS.

Galgano OLBS Reports; Valentine OLBS Reports; Ho OLBS Reports; A. Rodriguez OLBS Reports.

72. Setting aside minor typographical, non-substantive differences, the DETAILS sections of those 20 OLBS Reports are identical to Legal Bureau OLBS Narrative, except that they (a) slightly reword the first sentence—changing “arrestee being told by Brookfield Director Mike Larkin that they had to leave Zuccotti Park so it could be cleaned of debris” in the Legal Bureau OLBS Narrative to “ARRESTEES WERE TOLD BY BROOKFIELD PROPERTY DIRECTOR MIKE LARKIN AND LT. VIVIANO OF MSTF THAT THEY HAD TO LEAVE ZUCOTTI PARK SO IT COULD BE CLEANED OF DEBRIS” in the OLBS reports; (b) omit the words “AO OBSERVED”; and (c) add “AND LT. VIVIANO” from the first sentence of the Legal Bureau OLBS Narrative. Legal Bureau OLBS Narrative. Galgano OLBS Reports; Valentine OLBS Reports; Ho OLBS Reports; A. Rodriguez OLBS Reports.

73. Setting aside minor typographical, non-substantive differences, the DETAILS sections of the 21 total OLBS Reports prepared by Boyle and Lindao, Sullo, L. Rodriguez, and Waring,⁵ state:

AT TPO ARRESTEES WERE TOLD BY BROOKFIELD PROPERTY DIRECTOR MIKE LARKIN AND LT. VIVIANO OF MSTF THAT THEY HAD TO LEAVE ZUCOTTI PARK SO IT COULD BE CLEANED OF

⁵As representative examples, compare M12624791 (“SO IT COULD BE CLEANED OF DEBRIS”; “ARRESTEE RESOSTED ARREST”) with M12624840 (“SO IT CAN BE CLEANED OF DEBRIS” “ARESTEE RESISTED ARREST”).

DEBRIS. ARRESTEE REFUSED TO LEAVE. ARRESTEE WAS INFORMED BY A/O THEY WERE UNDER ARREST. ARRESTEE RESOSTED [sic] BY LYING ON THE GROUND, INTERLOCKING ARMS WITH OTHERS AND REFUSING TO PLACE HANDS BEHIND BACK.

Boyle OLBS Reports; Lindao OLBS Reports; Sullo OLBS Reports; L. Rodriguez OLBS Reports; Waring OLBS Reports.

74. Setting aside minor typographical, non-substantive differences, the DETAILS section of those 21 OLBS Reports are identical to the Legal Bureau OLBS Narrative except that these 21 OLBS Reports omit “AO observed arrestee,” add “AND LT. VIVIANO,” and slightly reword the first sentence—changing “arrestee being told by Brookfield Director Mike Larkin that they had to leave Zuccotti Park so it could be cleaned of debris” in the Legal Bureau OLBS Narrative to “ARRESTEES WERE TOLD BY BROOKFIELD PROPERTY DIRECTOR MIKE LARKIN AND LT. VIVIANO OF MSTF THAT THEY HAD TO LEAVE ZUCOTTI PARK SO IT COULD BE CLEANED OF DEBRIS” in the OLBS reports—in the Legal Bureau OLBS Narrative. Legal Bureau OLBS Narrative; Boyle OLBS Reports; Lindao OLBS Reports; Sullo OLBS Reports; L. Rodriguez OLBS Reports; Waring OLBS Report.

75. The re-worded version of the first sentence is identical to the reworded version that appears in the 20 OLBS Reports described *supra* ¶ 72.

76. Setting aside minor typographical, non-substantive differences, the DETAILS sections of the 10 total OLBS Reports prepared by Li and Ahmed⁶ state:

AT T/P/O A/O OBSERVED DEFT BEING TOLD BY BROOKFIELD DIRECTOR MIKE LARKING THAT THEY HAD TO LEAVE ZUCCOTTI

⁶ As representative examples among these OLBS Reports, there is variation in that they use “DEFT” v. “ARRESTEE” v. “ARRESTEEE” v. ”ARRESTEE”; “OBS.” v. “OBSERVED”; “T/P/O” v. “TPO”; “MIKE LARKIN” v. “MIKE LARKEN”; “PLACE HANDS” v. “PALACE HANDS”; “REFUSED” v. “RESUSED”; and “IT CAN BE CLEANED” v. “IT COULD BE CLEANED”.

PARK SO IT COULD BE CLEANED OF DEBRIS. DEFT REFUSED TO LEAVE. DEFT WAS INFORMED BY A/O THEY WERE UNDER ARREST. DEFT RESISTED ARREST BY LYING ON THE GROUND, INTERLOCKING ARMS WITH OTHERS AND REFUSING TO PLACE HANDS BEHIND BACK.

Li OLBS Reports; Ahmed OLBS Reports.

77. Setting aside minor typographical, non-substantive differences, the DETAILS sections of those 10 OLBS Reports are identical to Legal Bureau OLBS Narrative. (Legal Bureau OLBS Narrative; Li OLBS Reports; Ahmed OLBS Reports).

DATED: Brooklyn, New York
December 18, 2018

/S/

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